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CURRENT TOPICS

The Birthday Honours

IT is particularly pleasing to note, among the names in a Birthday Honours list in which the legal profession is well represented, that the honour of knighthood is conferred on Mr. S. C. T. LITTLEWOOD, chairman of The Law Society's Legal Aid Committee. Mr. Littlewood has been closely associated with the legal aid scheme from its inception and the honour marks much devoted service no less than the successful launching of a new public enterprise in a largely untried field. A knighthood is also conferred on Mr. A. C. DAWES, C.B.E., legal adviser to the Ministry of Education, and among the recipients of the C.B. we note the names of Mr. W. A. H. DRUITT, principal assistant solicitor in the department of H.M. Procurator-General and Treasury Solicitor (admitted 1935), and Mr. V. M. R. GOODMAN, O.B.E., M.C., principal clerk, Judicial Office, House of Lords. The C.B.E. is awarded to Mr. T. MACDONALD BAKER, T.D., D.L., solicitor to the Metropolitan Police (admitted 1924), and to Mr. D. J. PARRY, clerk of the Glamorgan County Council (admitted 1921), Mr. J. S. R. D. RAWCLIFFE, registrar, H.M. Land Registry (admitted 1910), and Mr. E. H. RICHARDS, assistant solicitor, Ministry of Labour (admitted 1920). A list of the honours of legal interest will appear next week.

Legal Aid: Disclosure and Privilege

AN interesting decision on the interpretation of s. 14 (1) of the Legal Aid and Advice Act, 1949, is reported in *The Times* of 6th July. In *W.* v. *W.*, before Mr. Commissioner GRAZEBROOK, a wife petitioner applied for the production of certain documents relating to the respondent's application for legal aid with a view to the revocation of his civil aid certificate under reg. 11 (4) of the Legal Aid (General) Regulations, 1950. The learned Commissioner said that he could not accede to the proposition that "person" in the exception in s. 14 (1) (*a*) of the Act (in favour of disclosure of information for the purpose of facilitating the proper performance of functions under the Act by "any person or body of persons") included the court or judge, and there was therefore nothing in s. 14 which excepted information obtained by The Law Society from the provisions as to secrecy. The information obtained by them in the course of the application for a civil aid certificate was therefore prohibited from disclosure. He further held that the National Assistance Board, by virtue of General Regulation 5 (4), were in the circumstances acting as agents of The Law Society and were within the category of "any committee or person" in s. 14, and disclosure of information given to the Board was therefore also prohibited.

"The Law Society's Gazette"

THE *Law Society's Gazette* for June contains a number of items and memoranda which should be of more than usual interest to practitioners. The LORD CHANCELLOR has confirmed his view, published in the *Gazette* last February, that a justiceship of the peace is an office and not an honour and "that there is, therefore, in no sense a right to use the initials J.P., and that consequently, they ought not to be used in any circumstances in which their use might be misinterpreted." Charitable and ecclesiastical organisations are reminded that 1st July is the final date for applications to have land qualified

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under s. 85 (5) of the Town and Country Planning Act, 1947, exempted from development charge. Solicitors are also advised that as a result of the *nisi prius* decision of WALLINGTON, J., in *Ambler* v. *Ambler*, on 14th March, a Special Commissioner authorised under s. 70 of the Supreme Court of Judicature (Consolidation) Act, 1925, has no jurisdiction to make an order under s. 2 of the Matrimonial Causes Act, 1950, and that, therefore, originating summonses under that section should not be issued for hearing before Special Commissioners. Finally in our selection of items, the Council have made available the Court Room at No. 60 Carey Street for a preliminary meeting of a Union of Articled Clerks, to be held on 25th June, 1951, at 5.30 p.m. The Union is to be conducted quite independently of The Law Society by and for articled clerks. It will fill a long felt want. Articled clerks are asked to attend, and in the meantime to get in touch with Mr. K. H. WYSER at The Law Society's School of Law, 33–35 Lancaster Gate, London, W.2.

Gray's Inn

POSSIBLY because of its distance from the courts, Gray's Inn has not been used for barristers' chambers. Solicitors, as well as the Bar, will be interested in the announcement of the Ministry of Local Government and Planning on 28th May that the Minister has given permission to the Honourable Society of Gray's Inn for the rebuilding of South Square and Gray's Inn Square according to plans submitted by the architect, Mr. EDWARD MAUFE, R.A. Work will begin on Gray's Inn Square within the next year, the building including residences on the top floor with chambers beneath. The rebuilding of the chapel is also expected to begin during the same period. Later, when the licences are available, work will begin on the library and South Square. The Ministry of Local Government and Planning stated that, after discussions with the London County Council, it had agreed that the plans need not conflict with a proposal for the widening of Gray's Inn Road.

Part-time Magistrates' Clerks

"LAWYER," writing in the *Walsall Observer* of 12th May, stated that "a magistrate's discretion is a curious thing which bears little relation to the thoughts and impulses of a reasonable person of wordly experience." He continued: "Very often the principle of the decision reached appears to be 'Find out what the advocate wants and stop him having it,' and usually no reasons for the decision are given, so that it will be harder to object to or upset." He said that "much better results are obtained in those courts which have a part-time clerk who is a practising solicitor, and are not provided with a full-time official who is a stranger to the district, because in the poorer districts of the country men choose a salaried profession which will enable them to migrate as soon as possible to less indigent surroundings. The part-time clerk knows his country and knows his people and the experience and knowledge of the world gained in his ordinary practice stand him in good stead when he has to advise his bench . . . he has at least the positive virtue of not being an official all the time." Advocates may consider that much can be said for this point of view, but it would be interesting to know whether any practicable scheme can be devised for suiting part-time service to the needs of the larger cities and towns.

WARNING TO OWNERS PAYING RATES FOR TENANT

THE case of *R.* v. *East Norfolk Local Valuation Court and J. H. Martin* [1951] 1 All E.R. 743 (*ante*, p. 300) does not on first sight appear to have an immediate bearing on an owner's liability for rates. The head-note to the case is as follows:—

"A valuation officer made proposals for the alteration of the valuation list in respect of certain hereditaments, the occupiers of the hereditaments in question served notices of objection and the valuation officer gave notice of appeal to the local valuation court against each objection. Before the date fixed for the hearing of the appeal, the occupiers withdrew their objections unconditionally. Notwithstanding the withdrawal of the objections, the valuation court took the view that they must deal with the appeals, and, in the absence of appearance by the parties, dismissed them.

HELD: Once an objection was withdrawn, there was nothing left on which the valuation court could adjudicate, and, therefore, they were not entitled to proceed with the determination of the appeal.

Semble: Even if a person entitled under s. 48 (3) of the Local Government Act, 1948, to appear on the hearing of an appeal by the valuation court had wished to be heard, the objection having been withdrawn, there was no appeal subsisting on which such a person could have been heard."

When, however, the relevant sections of the Local Government Act, 1948, are analysed, it will be seen that an owner can be charged increased rates through his tenant's action or default without having any chance to voice his opposition. Every owner who has let property at an inclusive rent and has agreed to pay the rates for a tenant may be adversely affected as a result of this decision.

To show why this is so it is necessary to consider some of the sections of the Local Government Act, 1948. Sections 40 and 41 deal with the alteration of current valuation lists and s. 48 with the sittings, procedures and powers of local valuation courts. A proposal for alteration of the list is made under s. 40 and by s. 41 (2) it is, if made by a valuation officer of the Inland Revenue, served on the occupier of the property affected and upon the rating authority. A proposal is *not*, however, served upon the owner of the property where there is an occupier, unless the owner is compulsorily rated under s. 11 of the Rating and Valuation Act, 1925, instead of the occupier, or where he has entered into an agreement with the rating authority under the said section. The official view is understood to be that in many cases it would be difficult to ascertain who the owner is. The result therefore may well be with a careless or indifferent tenant that the owner never knows about a proposal until it is too late for him to object to it. It is by virtue of subs. (3) of s. 41 that the owner of the property has a right to give notice of objection to a proposal within twenty-one days of its service on the occupier and if he knows about the proposal this is a valuable right. Moreover, under s. 48 (3) the owner is entitled to appear at the hearing of an appeal to the local valuation court.

The contentions of the defendants in the *East Norfolk* case were that, first, a notice of objection could only be withdrawn within the twenty-one days allowed for giving notice of appeal after receipt of a notice of objection by the proposer, and secondly that, once notice of appeal had been given under s. 41 (6) (*b*), the notice could not be withdrawn at all. To support these contentions reference was made to the rights of the other parties (the owner and rating authority) under s. 48 (3) to appear at the hearing of the appeal. These rights could be taken away by an act of a third party (the occupier) if the defendants were wrong. The court, however, perhaps somewhat misled by the analogy of an appeal in ordinary civil cases, rejected both the defendants' submissions

and held, in effect, that a notice of objection can be withdrawn at any time irrespective of the rights of other parties under s. 48 (3). The analogy is not a good one since in appeals to the Court of Appeal there are normally only two parties, whereas in these rating appeals there may be three or four.

It is, of course, true that other parties can protect themselves by lodging a notice of objection to a proposal and as a consequence of this decision rating authorities may well think it wise to lodge a formal notice of objection in every case, in order to protect themselves from secret agreements come to between a valuation officer and an occupier. An owner, however, may not be in such a fortunate position. The proposal for an alteration of the rating list is not served upon him. To suppose that he will know about the case from the publicity given to the hearing before the local valuation court under reg. 5 (2) of the Rating Appeals (Local Valuation Court) Regulations, 1949, is quite illusory, since the public notice does not even specify the properties in respect of which the appeals are to be heard.

Even if an owner has known about a proposed variation of an assessment he may well hitherto have relied on his rights to appear at the appeal under s. 48 (3) and have not thought it necessary to lodge a formal notice of objection in addition to that served by his tenant.

Now, however, an owner's rights, such as they were, are gone. A tenant is not bound to lodge a notice of objection to a proposal for an increase in assessment or if he does he can withdraw it at any time. Once withdrawn, any appeal that is pending automatically lapses. A tenant, therefore, may through inaction or by a wrong action permit an assessment to be increased and an owner who is paying the rates on the property may be thereby gravely prejudiced.

It would seem necessary, therefore, in every case where the occupier is the rated person, but the owner has agreed to pay the rates on the property, for the tenancy agreement to include the two following clauses :—

(1) A covenant by the tenant to inform the owner forthwith as soon as a proposal to alter the valuation list is received by him.

(2) (Perhaps not so essential but a valuable safeguard for owners) a covenant by the tenant to lodge a notice of objection immediately a proposal to alter the rating list unfavourably is received by him and not to withdraw the notice of objection without the owner's consent.

Now that the Inland Revenue have taken over the work of valuation for rates, assessments are likely to be reviewed more carefully and owners of property need to do more to protect themselves.

R. S. W. P.

RES JUDICATA AND RENT TRIBUNALS

THE decision of the Divisional Court in *R.* v. *Fulham Rent Tribunal; ex parte Zerek* [1951] 1 All E.R. 482, is of interest not so much for what was actually decided as for the discussion by Devlin, J., of two topics—the grounds on which certiorari will issue to tribunals, and the extent to which the decision of the tribunal is conclusive in subsequent proceedings. The former topic has been the subject of several decisions recently, notably *R.* v. *Hackney Rent Tribunal; ex parte Keats* [1950] 2 All E.R. 138, and *R.* v. *City of London, etc., Rent Tribunal; ex parte Honig* [1951] 1 All E.R. 195; 95 SOL. J. 122. But on the latter topic Devlin, J., was breaking new ground.

First of all, it is necessary to distinguish between the "merits" and "collateral matters" in relation to any decision of a tribunal. Let us consider a particular house—100 High Street, Anytown—which is let by Leonard to Touchstone and referred by the latter to the tribunal under the Landlord and Tenant (Rent Control) Act, 1949. The tribunal reduces its standard rent from £150 to £100 per annum. By the "merits" I mean the tribunal's decision that (supposing the house to be one over which they have jurisdiction by virtue of s. 1 of the Act of 1949) its reasonable standard rent is £100. That aspect of the decision is, and remains, unassailable, even if the decision was unreasonable, or against the weight of the evidence, or if there was no evidence to support it. The decision on the merits can only be impeached if the reference to the tribunal was invalid (as in the *Park West* case [1949] 1 K.B. 666), or if the tribunal failed to give both sides a fair hearing (as in the *Park West* case and also in *R.* v. *Kingston-on-Hull Rent Tribunal; ex parte Black* [1949] W.N. 51). If it is not so impeached, it is conclusive of the reasonable rent of 100 High Street, Anytown, under the Act of 1949.

But the decision is not in the least conclusive on the question whether, as a matter of law, 100 High Street, Anytown, is within the scope of s. 1 of the Act of 1949. If it is not, then the proceedings before the tribunal were *coram non judice*, and its determination of the reasonable rent is worth nothing. Suppose that, after the proceedings before the tribunal, Leonard (without moving for certiorari) sues Touchstone for rent accruing due in respect of a period after the tribunal's decision has been entered in the register, at the old rate of £150 per annum. Touchstone's defence is the tribunal's determination under s. 1 of the Act of 1949. Leonard can impeach that determination as having been made without jurisdiction. 100 High Street, Anytown, is within s. 1 of the Act of 1949 only if it is a house within the rateable limits of the Rent Acts, if it is "let as a separate dwelling" within the meaning of the Acts, and if its standard rent (apart from the tribunal's decision) would be the rent at which it was let under a letting beginning after 1st September, 1939. On any one of these points the tribunal may have reached a wrong decision. It does not matter whether Leonard took any of these points before the tribunal. It is not a court of law, and no estoppel by record or plea of *res judicata* can arise from its proceedings.

Certainly the constitution, powers and procedure of rent tribunals ill fit them to decide questions which often lead to differences of opinion in the higher appellate courts. Thus, the house may have been let in 1939 on one of those curious tenancies, which crop up now and again in the law reports, where the tenancy is at first furnished and after a time the tenant buys the furniture, or gives it back to the landlord and brings in his own furniture; or it may be that the house was first let unfurnished in 1938, but it now has a garden at the back which was not within its curtilage before the war, and the tenant claims that there has been a change of identity within the principle of *Langford Property Co.* v. *Batten* [1950] 2 All E.R. 1079; 94 SOL. J. 821; or the dispute may be purely one of fact, for instance, whether a letting which is admitted to have been in force at the outbreak of war in 1939 was furnished or unfurnished. It would be an understatement to say that on topics such as these the ordinary courts of law are better fitted to adjudicate than rent tribunals, because tribunals are entirely unfitted to do so; and only those who regard the relations of landlord and tenant not as a matter for judicial arbitration in accordance with recognised principles of law but as a total war to be

waged without regard for any principles will regret that, as Devlin, J., has now emphasised, "the findings of the tribunal on questions concerning jurisdiction cannot ultimately prejudice either party."

The question has been much discussed, notably in *Keats'* and *Honig's* cases, *supra*, how far the tribunal's decisions on collateral matters, touching not the merits but the jurisdiction, are open to review on certiorari. In *Keats'* case, jurisdiction depended on whether a covenant in a lease to use the premises for business purposes only was genuine or a sham. The Divisional Court held, not only that there was no evidence that it was a sham, but that it was not within the powers of the tribunal to investigate the matter at all, their only power being to fix rents of tenancies which were admitted to be within their jurisdiction. In *Honig's* case, under the Furnished Houses (Rent Control) Act, 1946, jurisdiction depended on whether a notice to quit, which had expired before the reference was made, was a valid notice. The tribunal, after hearing oral evidence on both sides, had decided that it was invalid, and that consequently there was a subsisting contract of tenancy on which they had jurisdiction to adjudicate. The Divisional Court held that the tribunal were right to investigate the matter, and that on a question of fact on which they had themselves seen and heard the witnesses and where there was evidence both ways, their decision would not be reviewed by way of certiorari.

The conflict between these two cases has now been resolved. *Keats'* case, so far as it laid down that tribunals have no power to investigate collateral matters affecting their jurisdiction, is overruled; but so far as it laid down that the decision on such a matter will be quashed if there was no evidence to support it, it is affirmed. *Honig's* case is approved. If there was evidence both ways, the Divisional Court will not consider whether the tribunal was right to accept one story rather than the other.

In an elaborate review of the authorities from *R.* v. *Bolton* (1841), 1 Q.B. 66, onwards, Devlin, J., stated the law as follows. There is a distinction between cases where the tribunal's decision on the collateral matter turned on a question of fact and those where it turned on a question of law. If it was a question of law, the court on an application for certiorari will deal with the point afresh, and the tribunal's award will stand or fall according as the court's decision affirms or overrules the tribunal's. But where the disputed point is one of fact, the Divisional Court will only quash the decision below if it is clear that there was no evidence to support it; where there was evidence both ways, certiorari will not issue.

In an application for certiorari "the court is not . . . finally determining the validity of the tribunal's order as between the parties themselves, but is merely deciding whether there has been a plain excess of jurisdiction or not. Where the question of jurisdiction turns solely on a disputed point of law, it is obviously convenient that the court should determine it then and there. Where, however, the dispute turns on a question of fact, about which there is a conflict of evidence, the court will generally decline to interfere," *per* Devlin, J. ([1951] 1 All E.R., at p. 488).

It must be remembered that the refusal to grant certiorari does not conclude the matter. The Divisional Court will not go into the merits of the tribunal's finding of fact unless it was perverse; but that does not give the finding the status of *res judicata*. If the aggrieved party takes the matter to the courts—if, as Devlin, J., suggested he might do, Mr. Zerek sued his tenant for rent at the original figure—the question is reopened, and must be examined *de novo* by the court. Suppose, for instance, that it is known that in September, 1939, 100 High Street, Anytown, was in the occupation of Green as the tenant of Brown, under a tenancy which began before the 1st of that month, but it is not known for certain whether this tenancy was furnished or unfurnished. Before the tribunal, Leonard led evidence tending to show that it was unfurnished, so that that letting established the standard rent (it being a new control house) and the tribunal has no jurisdiction. Touchstone produced evidence tending to show that it was a furnished tenancy, so that (the house never having been let before Green's tenancy) the case falls within s. 1 of the Act of 1949 and the tribunal has jurisdiction. The tribunal preferred Touchstone's evidence, and on an application for certiorari the Divisional Court declined to investigate the correctness of this finding. Still Leonard can reopen the matter in the county court. He can sue Touchstone for rent at the rate of £150 per annum. He can proffer the same evidence which the tribunal rejected, and fresh evidence if he can find any; and Touchstone must bring *his* evidence anew. Touchstone's only defence can be to plead the tribunal's determination of the reasonable rent of 100 High Street. Unless the tribunal had jurisdiction to determine it, this is no defence; and neither the fact of their hearing Touchstone's application nor their decision (if Leonard took this point before them) that 100 High Street was within s. 1 of the Act of 1949 proves that they had jurisdiction. It may be that under the principle *omnia præsumuntur rite esse acta* the court will put on Leonard the burden of proving that the determination was without jurisdiction: otherwise it would be for Touchstone to prove everything necessary to sustain the defence he has pleaded—which would include the averment that the case fell within the jurisdiction of the tribunal. But at all events the court, in deciding the question of jurisdiction, will not regard it as an appeal from the tribunal, but will examine the matter *de novo* on the evidence before it.

To reiterate, the tribunal's decision, and the Divisional Court's refusal to quash it, is conclusive of one thing only: that *if* 100 High Street, Anytown, is within s. 1 of the Act of 1949 its reasonable standard rent is £100. The "if" is a matter that can only be conclusively decided by the courts, in proceedings (not an application for certiorari) in which witnesses can be examined on oath and documents strictly investigated.

The facts of *Zerek's* case were remarkable. A tenant applied to the tribunal under the Act of 1949 to fix the standard rent of his flat. The landlord objected to the jurisdiction, on the ground that the flat had been let furnished. He produced a "certificate" to this effect, signed by the tenant when he entered into possession, and said that on the authority of *Keats'* case the tribunal could not go behind this document. Nevertheless, the tribunal heard the tenant, and this was the story he told. Zerek had agreed to let the flat to him, unfurnished, for 35s. per week. When he came along with his furniture to take possession, Zerek would not let him in until he had signed the certificate and also a receipt for £12 paid to him by Zerek for the hire of his furniture. Zerek never paid him this sum, or any part of it, but no doubt he thought that on the strength of these pieces of paper the law would regard him as having hired the furniture and let the flat furnished, albeit to the owner of the furniture. (Perhaps he had looked at *Maclay* v. *Dixon* [1944] 1 All E.R. 22, and regarded it as having established a principle, not as a decision on its particular facts.)

The tenant, having signed these documents, went into possession and paid rent at 35s. per week, which the tribunal reduced to 15s. The Divisional Court (Lord Goddard, C.J.,

Humphreys and Devlin, JJ.) held that the tribunal were entitled, and bound, to investigate the *bona fides* of the alleged furnished letting; and that they were entirely justified in deciding that the letting was in fact unfurnished. The Lord Chief Justice also pointed out that, even on Zerek's version of the facts, the tenant paid no more rent under the alleged furnished tenancy than he had agreed to pay for the same premises unfurnished, and therefore his tenancy was in any event "unfurnished" for the purposes of the Rent Acts, as no substantial proportion of the rent was attributable to payment for the use of furniture.

Devlin, J.'s review of the topic with which this article is concerned was therefore not strictly necessary to the decision, and was no doubt *obiter*. But the principles he deduced from his review of the authorities are well founded—one is tempted to say irresistible; and many people, laymen as well as lawyers, will be grateful to his lordship for having pointed out that rent tribunals have not, at any rate to so great an extent as is popularly supposed, usurped the jurisdiction of the King's courts.

D. P. M.

Costs

LANDS TRIBUNAL AND KINDRED COSTS—II

We glanced briefly in our last article at some of the purposes of the Lands Tribunal set up by the Lands Tribunal Act, 1949, and of the tribunal mentioned in the Landlord and Tenant Act, 1927, and we will now consider in greater detail the proceedings before these special tribunals, in so far as they affect the costs.

To take the Lands Tribunal first, in addition to the purposes set out in s. 1 of the Act, it is provided by s. 4 that by an Order in Council the work of existing tribunals of a statutory nature may be transferred to the Lands Tribunal, and one of the purposes for which the tribunal exists is to hear appeals in respect of local valuations.

The rules of procedure in respect of appeals and references to the Lands Tribunal are provided by the Lands Tribunal Rules, 1949 (S.I. 1949 No. 2263 (L. 29)). They came into operation on the 1st January, 1950. Rule 42 of these rules provides that, except in cases where the provisions of subss. (1), (2) or (3) of s. 5 of the Acquisition of Land (Assessment of Compensation) Act, 1919, apply, the costs of and incidental to any proceedings before the tribunal shall be in the discretion of the tribunal. We noticed the effect of these subsections in our last article, and we shall have occasion to refer again to these provisions later.

Sub-rule (2) of r. 42, *supra*, states that if the tribunal directs that the costs of a party to the proceedings shall be paid by any other party thereto, the tribunal may settle the amount of the costs by fixing a lump sum, or may direct that the costs shall be taxed by the registrar of the tribunal on a specified scale of the scales of costs prescribed by the Rules of the Supreme Court, or by the County Court Rules, as the case may be. Presumably the tribunal, in determining the scale of costs to be applied, will have some regard to the amount involved and the complexity or otherwise of the case.

The decision of the registrar in respect of a taxation of costs undertaken by him is subject to review, for sub-r. (3) of r. 42 provides that if any party is dissatisfied with the taxation by the registrar then he may, within seven days of of the taxation, serve upon the registrar, and upon the other party or parties, objection in writing, specifying the items to which objection is taken and the grounds of the objection and asking that the taxation may be reviewed in respect of such items. The registrar will then review his taxation of the items objected to and will state the reasons for his decision in writing. It will be recalled that where objections are taken to a taxation in the High Court the taxing master may, if he thinks fit, receive further evidence (see R.S.C., Ord. 65, r. 27 (40)). There is no such provision in respect of taxations by the registrar of the Lands Tribunal, but presumably, if the registrar is not satisfied with the evidence already before him, there is nothing to prevent him from inviting the parties to submit further evidence, either orally or by the production of specified documents.

Again, so far as taxations in the High Court are concerned, there is a specific provision that the taxing master shall have power and authority to examine witnesses and to direct the production of such books and documents as he shall think fit (see R.S.C., Ord. 65, r. 27 (25)). There is no such specific direction in the Lands Tribunal Rules, 1949, but the power of the registrar to call for evidence must be implied, since he would not be able to formulate an opinion as to the correct amount due in respect of costs without the proper material upon which to reach his decision.

If any party is still dissatisfied with the result of the taxation after the review by the registrar, then he may within ten days of the decision apply to the President of the Lands Tribunal to review the taxation. It may be noticed here that sub-r. (5) states that any party who is dissatisfied with the result of the taxation may apply for a review by the President, so that it is possible for any party to apply for such a review, whether or not he had carried in objections to the taxation. Thus, it may well be that a fee had been allowed by way of "Instructions" which was considered too low by the party entitled to his costs and he may carry in objections to that item on the ground that it was too low. The registrar might uphold his decision and confirm the amount. Apparently, the opposite party could then, within ten days after the decision of the registrar on review, apply to the President to review the taxation of the item on the ground that the amount thereof was too high, notwithstanding that he had not objected to the taxation, and that the review by the registrar was based on objections carried in by some other party. The sub-rule goes on to provide that on the review the President may make such order as he considers just. The taxation by the registrar is final in respect of all matters to which objection has not been taken. This does not, however, prevent either party to the proceedings carrying the review to the President where he is dissatisfied with the amount allowed, provided an objection to a particular item has been lodged with the registrar, by one party or the other. The sub-rule merely directs that the allowance in respect of any particular item shall be reviewed by the registrar before it is reviewed by the President.

Unlike the High Court, there is a limit on the number of expert witnesses who may be called at the hearing, for r. 31 provides that in any proceedings before the tribunal, other than an appeal from a local valuation court, not more than one expert witness shall be heard on either side. The rule then goes on to provide that, where the claim is for compensation in respect of minerals or disturbance of business as well as in respect of land, then one additional expert witness may be called on either side. Notwithstanding this, if either party desires to call more than one expert witness or more than one additional expert witness application may be made to the registrar for permission. Apart from expert witnesses, there

would appear to be no restriction as to the number of other witnesses who may be called by either of the parties, and their evidence may be given orally or by way of affidavit (see r. 27).

As to the fees payable to the witnesses, no scale is provided by the Act or the rules, so that the ordinary principles applicable to the payment of witnesses in the High Court or the county courts, as the case may be, will apply. That is to say, if the costs are directed to be taxed and paid on the High Court scale, then the fees normally payable to witnesses in the High Court will be allowed, whilst if the tribunal directs that the costs shall be taxed according to one of the three scales under the County Court Rules, then the fees payable to the witnesses will be limited by the allowances for similar witnesses in the county court. So far as the expert witnesses are concerned, presumably, as in the High Court, they will be allowed, not only for their loss of time in attending the hearing of the reference before the tribunal, but also something by way of a qualifying fee, the amount thereof being commensurate with their professional standing and the time occupied in amassing the data to enable them to give evidence of an expert character.

One other point may be noticed here, before we consider the details of the costs in connection with proceedings before the Lands Tribunal, and that is in regard to the matter of representation. Rule 29 provides that in any proceedings before the tribunal any party may appear and be heard in person, or by counsel or solicitor, or, in any case other than an appeal from the decision of a local valuation court, by a representative appointed in writing. In the case of an appeal from the decision of a local valuation court, any party may be represented by counsel or by a solicitor or by any other person allowed by leave of the tribunal to appear. In the case of an appeal from a local valuation court, therefore, it will be necessary to apply to the tribunal for permission to be represented by anyone other than counsel or a solicitor.

The procedure in connection with the proceedings will differ somewhat according to whether they relate to an appeal from a local valuation court, a reference to the tribunal of a claim for compensation, or an appeal against a determination of the Central Land Board or other body, but, substantially, the form of the proceedings in each case is much the same. In the main, it will be found that, unlike proceedings in the Supreme Court or the county courts, the documents which constitute the pleadings, such as the notice of appeal or the notice of claim, are served on the opposite party through the registrar of the tribunal, instead of being served directly by the parties themselves. The registrar of the tribunal is placed in much the same position as a master of the Supreme Court, and he will hear interlocutory applications for directions in the course of the proceedings in the same way that a master of the High Court will hear summonses of an interlocutory nature. If objection is taken to the registrar's decision then the matter may be referred to the President of the tribunal rather as an appeal will lie to a judge from a master's order. The procedure in connection with interlocutory applications will be found in r. 22 of the Lands Tribunal Rules.

In addition to the costs of representation, and the witnesses' fees and expenses, there will also be the fees payable to the Lands Tribunal itself, which fees are, to a certain extent, the counterpart of the court fees which are incurred in an action in the High Court or the county courts. They are set out in the Third Schedule to the Lands Tribunal Rules, 1949.

With those further preliminary observations we must leave the matter, but in our next article on the subject we will trace the various stages in the proceedings and endeavour to give some indication of the costs involved in an appeal or a reference to the Lands Tribunal.

J. L. R. R.

A Conveyancer's Diary

RE SCARISBRICK—SOME CONCLUSIONS

THE observant reader will have noted even before he comes to these words that this article—the last on this most interesting case—appears under a heading different from that which I used to indicate the observations on *Re Scarisbrick* which have occupied this "Diary" in the past two weeks. The fundamental question in *Re Scarisbrick* (reported at p. 299, *ante*) was whether a trust for poor relations, regarded from the point of view of the law relating to charitable trusts, was affected by the extent of the period for which it was framed to endure. This question was answered after an examination of the authorities commonly referred to as the "poor relations" cases, and it seemed convenient to me to indicate the nature of the problem in *Re Scarisbrick* by the use of the heading "Trusts for Poor Relations." But now that the time has come to draw some conclusions from this decision the continued use of that heading would be misleading, for although the trust in *Re Scarisbrick* was a trust for the poor relations of the testatrix's children, the principles on which it was decided are equally applicable to any trust for the relief of poverty in which the class of beneficiaries is defined by reference to their relationship to an institution or company (see, e.g., *Spiller* v. *Maude* (1881), 32 Ch. D. 158*n*, and *Gibson* v. *South American Stores, Ltd.* [1950] Ch. 177, where the trusts were, respectively, for the members of a theatrical company and the employees of a limited company and their dependants), as to a trust where the beneficiaries are defined by reference to their relationship to an individual. This is clear from the judgment of Jenkins, L.J., in *Re Scarisbrick* (see the full report at [1951] 1 All E.R. 822, at p. 837).

One may therefore say that the element of public benefit which a trust or gift must possess before it can qualify for the privileges accorded to charitable trusts and gifts is satisfied, in the case of a trust or gift for the relief of poverty, if the class of beneficiaries is defined by reference to their connection or relationship with or to an individual or a corporation or an institution. This is not the case with trusts or gifts having any other charitable purpose, as has been emphasised by the recent decision of the House of Lords in *Oppenheim* v. *Tobacco Securities Trust Co., Ltd.* [1951] A.C. 297, where an attempt to secure for a trust for the education of persons connected with a limited company the peculiar treatment which, as a matter of history, trusts for the relief of poverty enjoy in this respect was completely unsuccessful. It is now clear beyond all manner of doubt that in this respect trusts for the relief of poverty are wholly anomalous.

The chief advantages which a charitable trust possesses over all other kinds of trust are twofold. Charitable trusts are not subject to the rule against perpetuities, and the income of such trusts is largely exempt from income tax under s. 38 of the Income Tax Act, 1918. In the circumstances of the present times the latter is obviously the more important of these advantages—indeed, this privilege is so

outstanding that, while it lasts, I have little doubt that many individuals and corporations will be tempted to explore the possibility of setting up trust funds for the benefit of relations or employees and take advantage of a situation which no other scheme for tax mitigation can rival.

Both the formulation of a scheme on the lines of *Re Scarisbrick* (if the settlor be an individual) or *Gibson's* case (if the settlor be a corporation) and its explanation to the settlor will require an unusual degree of care, and as the detailed requirements and ideas of settlors will always vary, each case will have to be considered as a problem on its own. But some general considerations will affect all such trusts, and of these the first is the necessity of confining the purpose of the trust to the relief of poverty. The objects of the trust must be defined either as such members of the defined class as are poor, or as such members of that class as in the opinion of the trustees are poor. The use of the word " poor " in this connection is to be recommended. Politicians may talk of lower-income groups, but as all lawyers know (although no layman will ever believe) the law prefers the direct to the indirect description, and if one is to take advantage of a line of authorities founded on a statute which put the relief of poverty among the objects with which it deals, the use of circumlocutions such as " in necessitous circumstances " or " deserving of assistance " or the like may not only lay the trustees appointed to administer the trust under the necessity of applying to the court for its construction, but also increase the possibility of the court regulating the execution of the trust by the settlement of a scheme for its administration. In explaining the advantages of the use of the word " poor " in this type of case to the settlor his adviser can reassure him that the standard of poverty required of a potential beneficiary is not that of destitution. This is clear on the authorities, and indeed the courts have never attempted to lay down any standard of poverty at all in these cases, at least where the settlor has left the selection of beneficiaries, within the broad lines of the trust, to the trustees. That a relative may be far from destitute and yet qualify for a benefit as a poor relation is, indeed, implicit in the nature of these particular trusts, for it can never be predicated of a trust for the benefit of poor relations that there will always be any poor relations to benefit.

The second thing to bear in mind in this connection is the danger of providing for two or more objects, either distinct or concurrent, as the objects of a charitable trust. It would undoubtedly be a convenience to settlors to be able to set up educational trusts for the benefit of their issue under the cover of *Re Scarisbrick*, and so achieve indirectly by the law of charitable trusts what the Finance Act, 1936, made it impossible to achieve by a simple trust. But the temptation to attempt anything on these lines should be resisted. A trust for the benefit of such of the settlor's relatives as should be poor, and in particular for the benefit of such of them as, in the opinion of the trustees, should be both poor and deserving of assistance in the expenses of their education, would probably be a good trust within *Re Scarisbrick*; but any variation in this fairly simple form may produce a trust capable of being construed as primarily a trust for education, and in that event the limitation of the class of beneficiaries to relatives would be fatal (see *Oppenheim's* case, *supra*).

Thirdly, the class of beneficiaries, although it may be limited to relatives and the like, must not be so limited as to form too small a class (see the judgment of Jenkins, L.J., at [1951] 1 All E.R. 838, where a trust for such of the testator's statutory next of kin as should be in needy circumstances at the date of his death is given as an example of a trust too narrowly framed to bring it within the " poor relations " cases). This is a problem of drawing the line, and the only guide to what is possible is the whole body of authorities on this subject; and, as these authorities are recognised as anomalous, it is very doubtful whether any useful principle can be drawn from them to assist the draftsman in deciding how far he can go in narrowing the class of beneficiaries without running an undue risk of the whole basis of the trust being upset.

I do not think that there is anything more by way of general observations that can be added to what I hope may prove a useful exposition of the interesting and important decision in *Re Scarisbrick* and some of the lessons that may be learned therefrom. The potentialities of this decision are obviously great, but so are its limitations; and as the latter spring from the history of the question raised in this case, the time spent in explanation of some of its intricacies will not, perhaps, have been wasted.

" A B C "

Landlord and Tenant Notebook

COMPENSATION FOR GOODWILL—THE QUALIFYING PERIOD

ALTHOUGH the decision in *Williams* v. *Viscount Portman*, briefly recorded in " Current Law " for April, 1951 (No. 174*b*), is but a county court decision and the arguments are not reported, the point at issue was of some interest.

The Landlord and Tenant Act, 1927, s. 4 (1), confers a right to compensation for loss of goodwill on a tenant who proves that, by reason of the carrying on by him or his *predecessors in title* at the premises of a trade or business for a period of not less than five years, goodwill has become attached to the premises by reason whereof, etc. Section 25 (1) provides: " The expression ' predecessor in title ' in relation to a tenant or landlord means any person through whom the tenant or the landlord has derived title, whether by assignment, by will, by intestacy, or by operation of law." The applicant in *Williams* v. *Viscount Portman* was a tenant who had carried on the business of a jeweller on the demised premises for less than five years; but before he began carrying it on it had been carried on on the premises by a tenant of his, who had surrendered the residue of his underlease for a consideration (and presumably the period it had run, or that period plus the period of the residue, or the two plus that of the reversion to the underlease, came to at least five years). It was held that he had not qualified for a claim under s. 4 (and consequently not for a claim for a new lease under s. 5).

While the result cannot be considered unexpected, it is interesting to speculate on what arguments may have been advanced to support the claim. It may be said that at least two recent decisions could have been cited as affording some (but not enough) support.

In *Butlins, Ltd.* v. *Fytche* [1948] 1 All E.R. 737; 92 SOL. J. 231 (C.A.), the applicant company held the lease of what had been a vacant site but had been converted into an amusement park. Much of the goodwill had been created by sub-tenants and licensees of parts of the premises, who had conducted side-shows thereon, and the sub-tenancy agreements and licences had all been granted by another company, a subsidiary company controlled by the applicants. Dealing with the argument that the applicants could not base a claim on goodwill resulting from the activities of other parties, Tucker, L.J., said: "It seems to me quite immaterial that the goodwill may have so attached in part as a result of sub-leases granted to other persons. The report does not disclose precisely how Sussex Amusements, Ltd., obtain from Butlins the right to grant these licences or sub-leases to the persons who occupied the stalls and ran the side-shows, but it is clear that it was done in some way *with the consent of* Butlins, Ltd. As between Butlins and their landlords, it seems to me immaterial that goodwill may have been built up in part as the result of operations conducted on the premises by sub-lessees or licensees."

The applicant in *Williams* v. *Viscount Portman* might have cited the first and third sentences of the above passage in support of a proposition that the goodwill need not have been all his own work, as the pavement artists put it; but I think that the second sentence implies that perhaps more than mere consent must be a condition precedent of a right to compensation in such cases, and the fact that he had paid the sub-tenant for the goodwill would not bring him within the principle. He does not appear, however, to have suggested that he had carried on the business of a jeweller by "consenting to" his tenant carrying on that business.

The other recent authority is *Lawrence* v. *Sinclair* [1949] 2 K.B. 77 (C.A.). A tenant carried on business on demised premises, first, from 5th May, 1936 (when he acquired, by assignment, the residue of a lease) to 21st June, 1946 (when that lease expired), and then from its expiration till 1st June, 1948, as a tenant from year to year; the yearly tenancy was determined by notice to quit, given by the landlord, on the last-mentioned date (and it is not explained how the yearly tenancy came to be a 1st June to 1st June one). The landlord sought to defeat the claim for compensation (or a new lease) by contending that such a claim must be in respect of one tenancy only. The tenant had not made any claim when the first lease expired; he had not held for five years under the yearly tenancy, so there was no jurisdiction. The views of the Court of Appeal (upholding the county court judge, who had rejected the referee's report on this point) can be said to be summarised by the following passage from the judgment of Bucknill, L.J.: "Has he [the applicant] proved to the satisfaction of the tribunal that, by reason of the carrying on by him at the premises of a trade or business for a period of not less than five years, goodwill has become attached to the premises? He has proved that. Why, then, should he not get compensation? The only reason put forward is that one must read into this section words which are not there, namely, that he must have held the premises under one and the same title."

This decision, too, would have enabled the applicant in *Williams* v. *Viscount Portman* to deal effectively with an argument based on the fact that he had not carried on the business of a jeweller on the premises as the respondent's tenant for a period of five years; but, again, it would not enable him to show that that business had been carried on for that length of time by him or his predecessors in title.

Which leaves for further speculation whether, and if so how, a mesne landlord in such a position could hope to qualify for compensation for loss of goodwill partly paid for and partly created by himself? The device that suggests itself is a transaction effecting a merger of the reversion and term of the underlease. Research among the authorities warrants the view that the object might be achieved in this way, but only if great care were taken and much conveyancing skill exercised. For one thing, if, say, the sub-tenant were simply to re-grant the rest of his term to its grantor, the latter would probably be called upon to face the argument that the effect was a surrender, the sub-tenant's title having been extinguished, not merged (*Floyd* v. *Langfield* (1677), Free. K.B. 218). The value of goodwill did in fact play a part in the case of *Smith* v. *Mapleback* (1786), 1 Term. Rep. 441, though there was, of course, no statutory right to compensation in those days. What happened was that the assignee of a tenant agreed with his landlord that the latter "should have the premises mentioned in the lease, and should pay a particular sum over and above the rent annually towards the goodwill already paid by such assignee"; and it was held that this agreement brought about a surrender: the sum payable was not rent, but could be claimed in assumpsit. Existing authorities on merger are concerned more with circumstances in which it was held not to result than with its attainment; but we have known for over a century that "merger and extinguishment are considered as matter of intention" (*Re Dix; ex parte Whitbread* (1841), 2 Mont. D. & De G. 415). A recital has been an important factor in deciding upon such intention (*Belaney* v. *Belaney* (1867), L.R. 2 Ch. 138). The fact that it was to the advantage of the person concerned that estates should not merge has likewise weighed with the court (*Ingle* v. *Vaughan Jenkins* [1900] 2 Ch. 368). So it may not be beyond the wit of Lincoln's Inn to devise an instrument whereby a mesne landlord in the position of the applicant in *Williams* v. *Viscount Portman* could acquire his tenant's title without destroying it. Note that the definition cited says "whether by assignment . . . or by operation of law."

R. B.

HERE AND THERE

LAYMAN'S DELIGHT

WE, whose days are passed on the treadmill of legal proceedings, amid rent restrictions, war damage, bills of lading, bills of exchange or whatever other promoters of mental exhaustion and final nervous breakdown an inscrutable Providence has assigned us as a task, tend to be puzzled and slightly irritated when acquaintances and even relatives (who ought to know more about our lives than that) beg us to take them to the courts to see the enthralling panorama of British justice at work. From a nibble here and there at the Revenue Paper, the Companies Court, the Commercial Court, the undefended divorces, they emerge dazed, questioning, but ever hopeful. If they are very lucky they may have witnessed a brief comic interlude by one of the litigants in person who still, unaccountably in these days of state-aided everything, snatch their brief moment occasionally. But though, with the visitor, they touch a chord where the virtuosity of a well-conceived legal argument awakens no sympathetic glow, that is not what he (or, more probably, she) was searching for in the Gothic maze beside the Strand. What, of course, our lay friends always expect us to produce for their delight is an endless vista of cases in which girl crooners sue band leaders for libel, slander, assault, battery and anything else that may be lying about handy for the

purposes of untaxed entertainment. Of such stuff do they imagine our professional life to be exclusively woven. Would that it were. The law applicable is of the simplest and most elementary; the news value is enormous; nor are the educational aspects in the ways of the world by any means negligible. It is the hope of trying such a case as this that sustains the flagging spirits of many a witty judge, static in the metropolis or moving on circuit in the doubtful comfort of provincial lodgings. When it happens it is definitely something to write home about.

SAVOIR VIVRE

TIME was when such a case would have been the occasion of a portentous and Olympian display of "judicial ignorance" of life out of the ermine. As a fashion for judges the thing seems to have started with the question, "Who is Connie Gilchrist?" thereby creating a public sensation on the same grand scale as if one should now ask, "Who is Rita Hayworth?" Comfortably cushioned and quilted in their undevalued salaries the judges, unless they had the inquiring mind for life in the raw of a Mr. Justice Hawkins, tended to take rather a narrow view of "judicial notice" and the activities which did and which did not come within its purview. In the age of the common man when they must queue up and wash up, without benefit of clergy, or may find themselves travelling home in the underground beside the suspicious character they have just released on bail, remoteness is not a luxury in which they can plausibly indulge, though it is not so very long ago that a veteran survivor of another age at the Central Criminal Court, having occasion, in a judicial capacity, to handle a ration book, did so with the frank curiosity of one who had never, he said, seen one before. And then, of course, there is that surprising passage in the libel case of *Thaarup* v. *Hulton Press, Ltd.* (1943), 169 L.T. 309, where Scott, L.J., thus delivered himself on the secondary meaning of the word "pansy." He said: "I personally was not aware of the slang meaning of the word, nor was my brother MacKinnon, but my brother Goddard fortunately was quite alive to it, having had judicial experience as a result of which he had come to know of it."

KISS AS KISS CAN

SUCH innocence is becoming less and less of a practical possibility. The salary of a judge is no longer adequate to the upkeep of an ivory tower or to the convenience of a prolonged sojourn in a world of his own. Certainly the case of the crooner and the band leader ran its course on lines of almost startling realism. In the various press miscellanies of counsel's arguments, witnesses' testimony and judicial dicta which might be profitably arranged and republished as a "Young Crooner's Guide to Life in the Band," I think I like best the incontrovertible proposition that "a girl in show business cannot expect to be treated with the reverence of a Mother Superior of a convent." Curiously enough, however, an item last Saturday in one of the picture dailies seemed to suggest that they do. You know the orange girls at the Festival Gardens going about in the far-off-the-shoulder dresses which exercised such an irresistible appeal for Charles II. Well, it seems that if they actually arouse the obvious reactions in the contemporary male it is a matter of pained surprise for everyone concerned. No fate worse than death has yet threatened them. The worst is that "some men stand and leer." But do not touch the fruit. Do not breathe on the glass. Look the other way. To this end the authorities have provided them with a private bodyguard (I quote the report), "a young-looking grandmother only 5 feet tall" who is "never far away." "I never actually have to say anything to the few men who get awkward. I was a character actress once and I can make myself look really fierce when I want to." So you see what the Britain of the Future holds in store for us. But in the courts we still apparently riot mentally in the rakish unplanned past, and the girl, who could not expect to be treated as a Reverend Mother and would be so much happier and safer in the Festival Gardens, was solaced with ¼d. to be apportioned among the affronts of a tweak of the nose, a kiss on the ear and a slap on what I believe the best couturières call the lower back. On the law of kissing, Hilbery, J., made a pronouncement which should find its way into some Law Report or other: "I suppose every time a young man steals a kiss it is an assault. It is rather terrifying, is it not? In future, I suppose, young male students of the law will ask young ladies if they have their 'leave and licence' to kiss them." It would be the same sort of young man, a solicitor's clerk so they say, who marked his love letters "without prejudice."

RICHARD ROE.

REVIEWS

Book-keeping for Solicitors. By R. J. CARTER, B. Com., Chartered Accountant, Lecturer in Book-keeping and Trust Accounts to The Law Society's School of Law. 1951. London: Butterworth & Co. (Publishers), Ltd. 25s. net.

The author has written this volume as an introduction to the subject for law students. The book is in three sections, the first dealing with the principles of double entry book-keeping, the second with book-keeping for a trading business and the third with solicitors' accounts, and this covers the syllabus in this subject for the Solicitors' Intermediate Examination. While emphasis is quite properly laid on the principles of the subject, there are comprehensive examples in each section as well as separate chapters on the requirements of the Companies Act, 1948, and taxation in relation to accounts. In connection with solicitors' accounts, the importance of the Solicitors' Accounts Rules, 1945, and the Solicitors' Trust Accounts Rules, 1945, is shown by the references in the examples to the appropriate rule giving the authority for the particular transaction, the rules themselves being printed in full as appendices. In using in the examples of a solicitor's accounts a three-column ledger, the book makes a considerable improvement on previous text-books covering similar ground.

One criticism we have, however. In his disparagement of the journal Mr. Carter may be in the prevailing fashion; he does not even provide one for his solicitor's account. From the practical aspects of book-keeping in a solicitor's office the journal continues to discharge a useful function in the recording of transfers from the account of one client to that of another, transactions which are not as infrequent as might be supposed, especially if any appreciable amount of mortgage business is done; and as the majority of firms of any size continue to use the journal as part of their book-keeping systems it seems to us desirable that it should be adequately dealt with in a book on the principles of book-keeping.

Sir Thomas Erskine May's Treatise on the Law, Privileges, Proceedings and the Usage of Parliament. Fifteenth Edition. Editor: LORD CAMPION, G.C.B., D.C.L., formerly Clerk of the House of Commons. Assistant Editor: T. G. B. COCKS, O.B.E., a Clerk in the House of Commons. 1950. London: Butterworth & Co. (Publishers), Ltd. £4 4s. net.

When an acknowledged legal classic issues afresh from the hands of the same editor whose last edition endowed it with new authority and vitality, the critic can hardly do more

than record a welcome, particularly when, as here, that editor is the foremost master of his subject. It is over a century since the first edition of May's Parliamentary Practice, but the fourteenth by Sir Gilbert Campion (as he then was) came out as late as 1946, when it was completely remodelled to incorporate the changes brought about during two of the most eventful decades of Parliamentary history. Since the close of the late war developments have been numerous and rapid, providing ample material for a re-assessment of this overwhelmingly important branch of constitutional law. Nevertheless, though nothing has been omitted, this fresh edition is only a few pages longer than its immediate predecessor. The work retains the same arrangement as in the last edition. Perhaps the best possible illustration of its completeness is the inclusion in the text (not in a mere footnote) of the case of the Rev. J. G. MacManaway, in which the House of Commons accepted the report of the Judicial Committee of the Privy Council on 19th October, 1950, seven weeks after the date of the preface to the book. The only adverse criticism which one is inclined to make is that for a work in which the table of contents covers twenty-five pages an index of seventeen pages is hardly exhaustive, and that to afford truly ready reference it would be worth analysing the text far more minutely.

Secretarial Practice. The Manual of the Chartered Institute of Secretaries. Sixth Edition. 1951. Cambridge: W. Heffer & Sons, Ltd. 21s. net.

This publication is too well known to require any introduction and this new and completely revised edition not only maintains but enhances its value. Much new material has been added. Quoting from the cover: "The subjects dealt with include Procedure for the Formation of Companies, Transfer Procedure, Offers for Sale, Mortgages, Meetings, Procedure in Winding Up, Accounts, Powers of Attorney, Private Companies, Oversea Companies, Statutory Companies, Scottish Companies, Stamp Duties, Taxation, Control of Borrowing and Exchange Control, and Superannuation. . . . A summary is given of the main points of legislation affecting an English company seeking to register a subsidiary or to carry on business in Australia, Canada, New Zealand, Northern Rhodesia, Southern Rhodesia, the Union of South Africa, India and Pakistan, and the Irish Republic."

The approach throughout is commendably practical and in particular it is refreshing to find advice given, in cases where in strict theory it is safer to do nothing, to take action against an indemnity; in such cases practical considerations outweigh the slight legal risk, but so many secretaries are prone to over-caution. At the same time warning is given against over-confidence and, where points of legal difficulty arise, the secretary is advised that legal advice is necessary.

It is not uncommon for shareholders to desire holdings to be split into more than one account and separately designated. This position is considered and advice given, but it would have been desirable to point out the effect on rights, issues, bonus issues, etc., of splitting into more than one account.

There is a most useful and comprehensive set of model forms, nearly all of which are completely satisfactory; the inclusion of Renounceable Letters of Allotment is perhaps unnecessary, since a public issue of shares or debentures requires the employment of solicitors specialising in this form of work, and perhaps this is emphasised by the fact that these particular model forms can be improved upon in several respects. The appendices also include app. 34 to the Stock Exchange Rules (Requirements as to Official Quotation), the Companies (Winding-up) Rules, 1949, so far as these rules relate to voluntary winding up, and the Business Names Act, 1916 (as amended). The inclusion of the Business Names Act as an appendix is useful, but really it loses a great deal of its value owing to the non-inclusion of the Business Names Rules, 1949, which are equally important from the view of the company secretary. Other matters which one would like to see included in the appendices, even at the expense of increasing the bulk of the book, which already extends to 1010 pages (with Index), are (i) the notes issued by the Board of Trade with regard to applications under s. 19 (1) or s. 19 (2) of the Companies Act, 1948 (Omission of the word "Limited" from the name of a company), (ii) Part I of the regulations issued by the Board of Trade under r. 224 of the Companies (Winding-up) Rules, 1949, (iii) the Companies (Forms) Order, 1949 (without schedule), and (iv) the Defence (Finance) Regulations, 1939, rr. 6 and 10, and the Capital Issues Exemption Order, 1947, which are not dealt with in the text as should be the case.

Obviously very great care has gone into the preparation of this edition and the result is fully worthy of the high reputation of this book as a reliable and comprehensive treatise for the company secretary. The price of 21s. net is well below the true worth of the book, which is very well set up, bound and printed.

NOTES OF CASES

COURT OF APPEAL

MONEYLENDER: SECOND MORTGAGE: LIMITATION OF ACTION

C. & M. Matthews, Ltd. *v.* Marsden Building Society

Evershed, M.R., Jenkins, L.J., and Morris, J. 20th April, 1951

Appeal from Harman, J. (p. 205, *ante*).

X, the owner of a house, mortgaged it to the defendants to secure £725, repayable in monthly instalments. X then borrowed from the plaintiffs, registered moneylenders, £40, giving a promissory note whereby he undertook to repay the principal and interest at 82½ per cent. a year by monthly instalments of £5, and further giving the plaintiffs a legal charge on the property. X died in 1940, and on the date of his death he owed the defendants approximately £605 and the plaintiffs some £32. At the end of 1949 the defendants sold the property for £1,000 and, after deduction of their claim and the costs, retained £412. The plaintiffs, who, from the date of X's death, reduced the rate of interest to 48 per cent., claimed to be entitled as second mortgagees to £182 or, alternatively, the whole £412. The defendants resisted the claim as they considered that the transaction might be held to be harsh and unconscionable and that the plaintiffs might be barred by the Moneylenders Act, 1927, s. 13, which provides that no proceedings can be taken by a moneylender for the recovery of money lent, or for the enforcement of any security, unless the proceedings are commenced before the expiration of twelve months from the date when the cause of action accrued. Harman, J., held that the plaintiffs were not entitled to the application of the surplus in payment of their debt and ordered that the defendants, after paying their proper costs and expenses, should lodge the balance of the purchase money in their hands in court. The plaintiffs appealed.

JENKINS, L.J., who was asked by Evershed, M.R., to deliver the first judgment, said that in the view which he took, Harman, J., was right in holding that these were proceedings for the enforcement of the second mortgage and as such were barred under s. 13 (1) of the Act of 1927. It was true, as counsel for the plaintiffs contended, that s. 13 (1) was not apt to extinguish a right as opposed to barring a remedy. Nevertheless, a person whose claim was wholly statute-barred in the sense that he could not bring any kind of action in any court to enforce it could not properly be described as a person entitled to the mortgaged property or authorised to give receipts for the proceeds of the sale thereof within s. 105 of the Law of Property Act, 1925, and there were, as Harman, J., rightly held, real grounds of distinction between this case and *In re Thompson's Mortgage Trusts* [1920] 1 Ch. 508, in that the sub-mortgagee of the second mortgage there concerned had admittedly got something due to him.

MORRIS, J., and EVERSHED, M.R., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *A. L. Figgis* (*M. A. Jacobs & Sons*); *E. G. Wright* (*Bentleys, Stokes & Lowless*, for *Jobling & Knape*, Morecambe and Heysham).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

RENT RESTRICTION: PREMIUM

Navarro *v.* Moregrand, Ltd., and Another

Somervell, Denning and Birkett, L.JJ. 9th May, 1951

Appeal from Deputy Judge McQuown, sitting at the Mayor's and City of London Court.

By an agreement of 18th April, 1950, the defendant company granted the plaintiff a lease of a flat within the Rent Restriction Acts. The tenant alleged that before the execution of the agreement the second defendant, as agent for the company, at his office required that as a condition of the grant of the tenancy the tenant should, in addition to the rent, pay a premium of £225. The tenant alleged that he paid that sum to the second defendant, after which the tenancy agreement was executed, and by this action he claimed repayment of the money, as an illegal premium, from both defendants under s. 2 (5) of the Landlord and Tenant (Rent Control) Act, 1949. The company contended that, if the second defendant did receive £225 from the plaintiff tenant he was not, in accepting payment of it, acting within the scope of his authority as the company's agent, and did not receive it as such. The second defendant denied that he received any sum as a premium. The deputy county court judge found that the tenant in fact paid the £225 to the second defendant. He negatived the suggestion that the company by an official of theirs had authorised the taking of the money. He held that the very fact of the second defendant's asking for a premium constituted notice to the tenant that the second defendant was exceeding his authority, and that accordingly the company, who had not received the money, could not be rendered liable for the agent's act. He accordingly gave judgment for the tenant against the second defendant for the sum claimed, but dismissed the action against the company. The tenant appealed against the dismissal of his action against the company, and the second defendant appealed against the judgment given against him.

SOMERVELL, L.J., said that it was argued for the company that, if they were to be held liable for the payment of the £225, it must have been one made to them. That would include a payment to their agent acting within his actual or ostensible authority. In his (his lordship's) opinion, the deputy judge's view that the very fact of the second defendant's asking for a premium constituted notice that he was exceeding his authority was a misapplication of the law. He did not think that, in the circumstances of the case, the fact that that was an illegal demand amounted to such notice to the tenant. There might be a case where a plaintiff tenant knew who his landlord was and that the landlord would be unlikely to make an illegal demand for a premium. But here, once it was found that, as between the tenant and the second defendant, this was a premium in the full sense of the word, the tenant was entitled to treat that payment as payment of a premium made to the agent and accepted by the latter's principal. He (his lordship) had come to the conclusion that anyone in the tenant's position as tenant would have thought that the landlords were demanding a premium for the tenancy. Therefore the tenant's appeal would be allowed and he would have judgment against the company for the sum claimed. The other appeal failed.

DENNING and BIRKETT, L.JJ., agreed. Plaintiff's appeal allowed. Second defendant's appeal dismissed.

APPEARANCES: *Charles Lawson* (*Richard Davies & Sons*); *E. V. Falk* (*Stanley Wise & Co.*); *M. Sherrard* (*M. Finer* with him) (*Lawrence Barnett & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ALLOTMENT: WHEN AN AGRICULTURAL HOLDING

Stevens *v.* Sedgeman

Somervell, Denning and Birkett, L.JJ. 9th May, 1951

Appeal from Judge Rawlins sitting at Helston County Court.

The plaintiff landlord was the owner of land, forming part of a field, which was let to the defendant tenant for five shillings a year. He served a notice to quit on him which expired on 25th December, 1950. The tenant contended that the land in question was an agricultural holding; and that a notice of 10th May, 1950, purporting to end the tenancy on 25th December, 1950, was bad because he was entitled to twelve months' notice expiring on the anniversary of the beginning of his tenancy. By s. 22 of the Allotments Act, 1922, the "expression 'allotment garden' means an allotment not exceeding 40 poles in extent which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family." By s. 1 (1) (*a*) notice to quit an allotment garden shall be by "a six months' or longer notice to quit expiring on or before April 6 or on or after September 29 in any year." By s. 1 of the Allotments Act, 1925, " . . . 'allotment' means an allotment garden as defined by the Act of 1922 or any parcel of land not more than five acres in extent cultivated . . . as a garden or farm . . ." By s. 1 (1) and (2) of the Agricultural Holdings Act, 1948, an agricultural holding means land used for agriculture for the purposes of a trade or business. The county court judge found that the area of the land did not exceed five acres, and that the tenant had sold the produce of the land, and had a garden attached to his home which provided him with produce for his own consumption. The judge was accordingly satisfied that the tenant used the land for agriculture for the purposes of trade or business. He held that the land was an "allotment" within the meaning of the Act of 1925, and not an agricultural holding. The tenancy had accordingly been duly determined, and the landlord was entitled to possession. The tenant appealed.

SOMERVELL, L.J., said that it was argued for the landlord that, the county court judge having found that the land was an allotment, *ipso facto* it was outside the Agricultural Holdings Act. He could not accept that view. The provisions of the two codes had been expressly so preserved as to be alternative. There might be a clear case where an allotment was in the main used for the production of crops for home production; or there might be a borderline case. The land in question clearly came within the definition of an agricultural holding in s. 1 of the Act of 1948. The fact that it was also within the definition of an allotment in the Act of 1925 did not mean that it was taken out of the Act of 1948. It followed that that Act applied, and that, as notice to quit had not been given in accordance with it, the appeal must succeed, and the tenant was entitled to remain in possession.

DENNING and BIRKETT, L.JJ., agreed. Appeal allowed.

APPEARANCES: *E. Brian Gibbens* (*Burton, Yeates & Hart*, for *Vivian Thomas & Jervis*, Penzance); *J. Comyn* (*Balderston, Warren & Co.*, for *Ratcliffe, Son & Henderson*, Helston.).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: ADVERTISEMENTS ON OUTSIDE WALL

In re Webb's Lease; Sandom *v.* Webb

Evershed, M.R., Jenkins and Morris, L.JJ.

11th May, 1951

Appeal from Danckwerts, J. (94 SOL. J. 704).

By a lease dated 11th August, 1949, a landlord granted a tenant, who had been in occupation under an earlier agreement since 1939, a lease of the first and second floors of a building for twenty-one years at a rent of £2 a week. The landlord carried on the business of butcher, grocer and provision merchant on the ground floor and, since 1934, there had existed on the outside walls of the demised part of the building two large painted advertisements, one referring to the landlord's business and the other advertising matches made by Bryant and May. Danckwerts, J., held that the description of the demised premises in the lease included the outer walls but that there was in favour of the landlord implied in the lease an easement until the termination of the lease to keep those two advertisements in the position in which they were. The tenant appealed.

EVERSHED, M.R., said that the first question was what was the reservation sought to be implied. It was at that point that the landlord's difficulties began. His case presented a disconcerting ambiguity; the facts proved in evidence, if they were consistent with such an implied reservation as the landlord claimed, were equally consistent with a merely permissive privilege allowed by the tenant to the landlord and revocable by the former at any time. Ever since *Suffield* v. *Brown* (1864), 4 De G.J. & S. 185, it had been established that *prima facie* a grantor or lessor could not assert against his grantee or lessee any right or privilege unless it had been expressly reserved to

him. To this rule there were exceptions which Greer, L.J., in *Aldridge* v. *Wright* [1929] 2 K.B. 117, attempted to classify exhaustively, none of which, however, covered the landlord's case. It was contended on behalf of the landlord that there were certain further exceptions to the general rule, but in his (the learned judge's) judgment the general rule formulated in the cases left no room for any of those exceptions. The landlord had failed to establish the conditions necessary for an implied reservation and the appeal must be allowed.

JENKINS and MORRIS, L.JJ., agreed. Appeal allowed.

APPEARANCES: *A. de W. Mulligan* (*F. Duke & Sons*); *C. R. D. Richmount* (*Neil Mclean & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

RENT RESTRICTION: LIABILITY FOR RATES TRANSFERRED TO TENANT

Steel *v.* Cockroft

Lord Tucker, Singleton and Morris, L.JJ. 22nd May, 1951

Appeal from the Salford Hundred Court of Record.

The plaintiff landlord let a house to one Cockcroft, the father of the defendant. By that tenancy the landlord paid the rates. In 1917 Cockcroft became the statutory tenant of the house. In 1925 he died, and his widow, who had been residing with him, remained in possession as statutory tenant under s. 12 (1) (*g*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. She continued to pay the rent, and remained in possession until her death intestate in 1950. Her son, the defendant, then claimed to become statutory tenant as a member of her family who was residing with her at the time of her death. His claim was based on a letter sent in June, 1949, by the landlord to the defendant's mother, among other tenants: "... we have decided in the interest of all concerned to allow tenants to pay their general rates direct to the rating authority.... therefore we shall advise the rates department to collect their own rates as from 30th June, 1949 ... Your rent will accordingly be reduced as from 1st July ... In order therefore legally to conform with the above we beg to give you notice to terminate your tenancy on 25th June, 1949. If you remain after that date it will be assumed that you have agreed to the above." It was admitted that, apart from that letter, as the defendant's mother would have been a statutory tenant until her death, the defendant would have had no claim; but he contended that the effect of that letter was to terminate the old statutory tenancy and to create a new contractual tenancy, so that on her death he, as a member of her family who had been residing with her, could himself become a statutory tenant under s. 12 (1) (*g*). The county court judge gave judgment for the landlord, and the tenant now appealed.

LORD TUCKER, having referred to ss. 2 (3) and 15 of the Act of 1920, said that the tenant contended that the landlord's letter had offered a new tenancy at a different rent, and that by staying in possession the defendant's mother had accepted the terms so offered and had entered into a new contractual tenancy. He (his lordship) agreed with the trial judge that the parties had never intended to annul the old contract and make a new one. The fact that landlord and tenant agreed for their mutual convenience that the method of payment of rates should be varied did not of itself necessarily destroy a statutory tenancy. The arrangement was merely a matter of machinery concerning the payment of rates. It was made for the convenience of both parties, and, as a corresponding reduction was made in the rent, the transaction was not in contravention of the Act.

SINGLETON and MORRIS, L.JJ., agreed.

APPEARANCES: *J. Bamber* (*Charlesworth Needham*, for *D. F. Bland & Co.*, Manchester); *T. M. Backhouse* (*Rising and Ravenscroft*, for *Bernard Kuit & Steinart*, Manchester).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

SALE OF HOUSE: PUBLIC AUCTION: MEMORANDUM IN WRITING

Leeman *v.* Stocks

Roxburgh, J. 17th April, 1951

Action.

A purchaser bought a house at a public auction. Before the auction took place the auctioneer obtained a printed form of agreement and inserted the name of the vendor and his initials. After the auctioneer had knocked down the house to the purchaser he inserted the purchaser's name in the document and obtained his signature over a sixpenny stamp. Neither the auctioneer nor the vendor signed the memorandum of sale in the ordinary sense of the word, but the memorandum contained, in other respects, all particulars of the sale. In an action by the purchaser for specific performance the defendant pleaded that there was no memorandum in writing as required by the Law of Property Act, 1925, s. 40 (1).

ROXBURGH, J., said that the question was whether, when the vendor by his agent (for this purpose the auctioneer) procured the purchaser to sign the document in order to bind the purchaser by a contract, the vendor was not by his same agent (the auctioneer) recognising his name which was written at the beginning of the document as the affixing of his mark to the document. There was undoubtedly an oral contract which was concluded by the fall of the hammer, and as regards the signature of the party to be charged it could not make a difference whether the name occurred on the body of the memorandum, or at the beginning or at the end, if it was intended for a signature on the memorandum. It was true that, if the document was regarded in isolation, it contemplated by its own terms that it should be signed by both parties, but it was equally certain that, when the auctioneer obtained the purchaser's signature thereto, neither the purchaser nor the auctioneer, acting on behalf of the vendor, ever intended any other signature to be added to that document. It was the intention of both the purchaser and the vendor's agent, the auctioneer, that this should be the final record of the contract. Oral evidence was admissible to prove such intention; it was open to the court to investigate the circumstances to see whether the document came into being as a perfect agreement, and if the court on the evidence found that it did, then *Hubert* v. *Treherne* (1842), 3 Man. & G. 743, seemed to recognise that the court was not prevented from so holding by any impediment in law. Accordingly there was a sufficient memorandum to bind the vendor and specific performance had to be ordered.

APPEARANCES: *Lord Hailsham* (*Joynson-Hicks & Co.*, for *R. A. C. Symes & Co.*, Scunthorpe); *Parbury* (*Sharpe, Pritchard & Co.*, for *E. D. Tyssen Drakes*, Caistor).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

LEGACIES: "NOT LESS THAN FIVE YEARS' SERVICE"

***In re* Bedford; National Provincial Bank, Ltd. *v.* Aulton**

Danckwerts, J. 27th April, 1951

Adjourned summons.

By a will dated 31st December, 1947, a testator, who was a director of X, Ltd., gave to every co-director and every member of the staff of X, Ltd., "who shall have at my death had not less than five years' service with that company," a sum representing three months' salary and emoluments and, to every co-director and member of the staff of that company who had less than five years' service at the date of his death, a sum representing one month's salary and emoluments. The testator died on 15th October, 1948.

DANCKWERTS, J., said that, on the true construction of the will, the qualification denoted five years' *aggregate* service, and there was no reason to imply a condition that the five years' service should have been *continuous*. The words used in similar clauses in *In re Marryat* [1948] Ch. 298, and other cases, were substantially different from the words used in the present case. Accordingly, several periods might be added together so as to qualify for the larger legacy, provided the aggregate period was not less than five years' service. Further, although the directors had resolved to pay to some of the members of the staff, who were called up during the war for service in H.M. forces, half the salary which those members received, that resolution was not equivalent to saying that service in the forces was to be equivalent to service with the company for the purposes of the testator's will. *In re Cole* [1919] 1 Ch. 218 differed from the present case in that the terms of the legacy in that case required the beneficiary to enter the employ of the company and remain in such employ until the age of thirty-three; it was held that, as with the consent of the directors he joined H.M. forces, he had not ceased to be in the employ of the company. In the present case the condition was not employment but service; a person who served in H.M. forces was not during that period in the service of the company and, accordingly, the period of war service of those members of the staff who would otherwise have qualified for those

legacies could not be included in the qualifying period for the larger legacy.

APPEARANCES: *A. F. M. Berkeley; E. J. T. G. Bagshawe* (*Collyer-Bristow & Co.*, for *Ashington & Denton*, Sheffield); *Salt*, K.C., and *T. A. C. Burgess; Harold Christie*, K.C., and *Robert S. Lazarus* (*Peacock & Goddard*, for *Broomhead, Wightman and Reed*, Sheffield); *M. J. H. Fairbairn* (*Bell, Broderick & Gray*, for *Rodgers & Co.*, Sheffield).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: GIFT IN WILL ON TRUSTS DECLARED IN SETTLEMENT, INCLUDING POWER TO REVOKE AND ALTER

***In re* Schintz's Will Trusts; Lloyds Bank, Ltd. *v.* Moreton**

Wynn Parry, J. 2nd May, 1951

Adjourned summons.

On 12th September, 1906, a settlor made a settlement reserving to himself power "at any time or times hereafter by any deed or deeds, revocable or irrevocable, to declare such new or other trusts . . . as he may think fit for the benefit of all or any to the exclusion of the others of the following persons, namely [his] wife or his children or more remote issue or his collateral relations but not in favour of himself . . . or any other person or persons and for that purpose wholly or partially to revoke and make void the trusts . . . declared" in the settlement. By his will, made on 16th April, 1912, the testator directed, in the events which happened, that a half share of his residuary estate should be transferred to the settlement trustees for the benefit of his daughter, L, to be held by them "upon the trusts and subject to the powers and provisions . . . subject to which the share in the said settlement referred to as L's share shall be held under or by virtue of the said settlement and the deed or deeds (if any) which may hereafter be executed by me under the power of revocation and declaration of new trusts thereby reserved to me." The testator died on 5th August, 1912.

WYNN PARRY, J., said that, having regard to the operation of the Wills Act, 1837, s. 9, the provision at the end of the relevant clause in the will could not be operative, and the question was whether the presence of that provision had the effect of invalidating the whole of that clause or did not affect the validity of the other parts of that clause. The point was a question of construction of the will, construed against the background created by s. 9 of the Act of 1837, and the judgments in the relevant cases. It was not an easy point to resolve, but laying emphasis on the fact that the direction was to transfer the share in question to the trustees of the voluntary settlement and that the power reserved to himself by the testator in the offending clause in the voluntary settlement was a limited power of revocation and a limited power of appointment, the offending reference in the clause in the will could be treated as being merely descriptive of the powers contained in the settlement; therefore, the clauses in the will and in the disposition of the share of L in the settlement were valid and effective, except that the power to revoke the trusts and declare new trusts by subsequent deeds would have no effect. *In re Edwards' Will Trusts* [1948] Ch. 440, followed.

APPEARANCES: *R. R. A. Walker; Charles Russell*, K.C., and *R. W. Goff* (*Travers, Smith, Braithwaite & Co.*); *Milner Holland*, K.C., and *H. A. Rose* (*Tarry, Sherlock & King*); *Cross*, K.C., and *Arthur Bagnall* (*Lee, Ockerby & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

LOCAL AUTHORITY: COMMITTEE MAN'S RIGHT TO SERVE

Manton *v.* Brighton Corporation

Slade, J. 2nd May, 1951

Motion, treated as trial of action.

The plaintiff was an alderman of Brighton who was a member of three committees of the defendant corporation. A committee formed *ad hoc* to inquire into certain matters recommended "that the plaintiff should no longer serve upon any committee of the" corporation. The corporation adopted that report, and treated the plaintiff as removed from the three committees. By this action he claimed (*a*) a declaration that he was entitled to continue exercising all his rights and privileges as a member of the committees to which he was appointed until his term of office on those committees had expired, and that the corporation's resolution adopting the *ad hoc* committee's recommendation was *ultra vires* and of no legal effect; and (*b*) an injunction to restrain the corporation from interfering with the plaintiff's exercise of his rights and privileges as a member of the three committees to which he had been appointed, until his term of office had expired.

SLADE, J., said that although the corporation might have power to delegate their powers and sometimes their duties to others, the responsibility for the discharge of those duties remained with them. For the plaintiff it was contended that a duly appointed member of any of the corporation's committees could cease to be a member in the year for which he was appointed only by disqualification under s. 94 of the Local Government Act, 1933; resignation under s. 62; statutory vacation of office through his failure to attend a sufficient number of meetings; or disqualification for holding office as a member of the local authority under s. 59. For the corporation it was contended that those methods of disqualifying committee members were automatic methods of disqualification operating independently of the corporation's volition; but that they were not the only methods; that a person who conferred authority on another could always revoke it; that the appointment of the committees was nothing more than a permitted delegation by the corporation of their own powers and duties; that delegation to committees was no more than the conferring by one person of the exercise of his powers and duties on another; and that it was implicit in any conferring of authority on another that the person giving authority could always revoke it, even capriciously. Looking at the nature of the delegation here, he (his lordship) thought that a person could not divest himself of his statutory duties; he could get another to perform them, and all was well, provided that that other person performed them well; but if he failed to perform them then the person who had delegated had to perform them himself. An appointor must be able to determine the authority of his appointee. If there were power to revoke the authority of the committee as a whole, there must be power to revoke the authority of any single member of it. The result was that the action failed, and that result ensued as a legal consequence independently of any alleged conduct on the part of the plaintiff. Judgment for the defendants.

APPEARANCES: *G. Pollock*, K.C., and *N. F. Stogdon* (*Haslewood, Hare & Co.*, for *Bosley & Co.*, Brighton); *Percy Lamb*, K.C., and *J. P. Widgery* (*Sharpe, Pritchard & Co.*, for *J. G. Drew*, Brighton).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RAILWAYS: GOODS LOST FROM CLOAKROOM

Alexander *v.* Railway Executive

Devlin, J. 29th May, 1951

Action.

The plaintiff deposited seven boxes and trunks in the cloakroom of one of the defendants' stations, receiving the appropriate tickets in respect of them. He deposited the articles with the assistance of a friend who owned a few objects of trifling value in the trunks. A few days later a railway official discovered the friend in the cloakroom opening one of the trunks and removing articles from it. A fortnight later the friend told the official in charge of the cloakroom a false story about the tickets having been lost, paid accrued excess fees, signed a form of indemnity, opened the trunks, put articles which he wanted into one of them, removed that one, redeposited the rest, later sent the tickets to the station and had the remaining trunks despatched to him at Rochdale, received those trunks, and sold some of the contents. He was later convicted of offences including his dealings with the plaintiff's trunks. The plaintiff claimed damages against the railway executive for loss of and damage to the deposited goods.

DEVLIN, J., found that the conditions of deposit on which the defendants relied had been sufficiently brought to the plaintiff's notice by being printed on the backs of the cloakroom tickets and in large notices in the cloakroom, and said that the friend's being allowed to penetrate into the cloakroom, to which access was prohibited even to depositors by the conditions of deposit, was said by the plaintiff to constitute a breach by the defendants of the contract, and a fundamental breach going to the root of the matter, determining the bailment, and disentitling the defendants from thereafter relying on any of the exceptions in the contract of bailment. He relied on *North General Wagon*

and Finance Company, Ltd. v. *Graham* [1950] 2 K.B. 7, and, in particular, on the judgment of Cohen, L.J., at p. 15. The difficulty was in applying that principle. There could be no doubt that the defendant's duty to take care was an essential part of a bailee's duty. The importance of seeing that unauthorised persons did not have access to a bailor's goods could not be over-emphasised. The view which the defendants took of their duty was shown by cl. 4 of their own conditions, which stated that depositors themselves were not permitted access to any article which they had deposited. The breaking open of a locked article seemed to him (his lordship) to be in the nature of a fundamental breach. The plaintiff contended that thereafter the contract of bailment was brought to an end, with the result that when the defendants sent the five remaining trunks to the plaintiff's friend they could not have the benefit of their conditions. In his (his lordship's) opinion the plaintiff succeeded on that point, and the defence based on the conditions therefore failed. The uncorroborated statement of the friend was not a reasonable ground for believing that the cloakroom tickets had been lost. The parcels porter had been led into a breach of duty by the story of a plausible rogue and his desire not to adopt a "red-tape" attitude. A person who deposited things in a cloakroom was entitled to feel that there would be no interference with them. The plaintiff succeeded on the question of liability and there would be an inquiry before an official referee into the damage. Judgment for the plaintiff.

APPEARANCES: *Neville Laski*, K.C., and *Campbell Lloyd-Davies* (*Alan, Edmunds & Co.*); *M. Berryman*, K.C., and *Wingate* (*M. B. H. Gilmour*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bill received the Royal Assent on 31st May:—

British North America.

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

West Riding County Council (General Powers) Bill [H.C.] [30th May.

Read Second Time:—

Courts-Martial (Appeals) Bill [H.C.] [29th May.

London County Council (Money) Bill [H.C.] [31st May.

National Insurance Bill [H.C.] [31st May.

Nottingham City and County Boundaries Bill [H.C.] [31st May.

Sutton and Cheam Corporation Bill [H.C.] [31st May.

Worcester Corporation Bill [H.C.] [31st May.

Read Third Time:—

Brighton Extension Bill [H.L.] [30th May.

Bristol Corporation Bill [H.L.] [30th May.

London County Council (Crystal Palace) Bill [H.L.] [30th May.

In Committee:—

Fraudulent Mediums Bill [H.C.] [31st May.

B. DEBATES

On the Second Reading of the **Courts Martial (Appeals) Bill,** the LORD CHANCELLOR said the Bill allowed an appeal against conviction only, not against sentence, but it did not limit the appeal to questions of law as suggested by the Lewis Committee. On sentence of death, appeal lay with permission of the Appeal Court, but in all other cases the convicted person could not appeal unless he had first presented a petition to the Admiralty or to the Secretary of State praying that the conviction be quashed. This was to prevent the court being burdened with cases which could justly and expeditiously be dealt with by the exercise of prerogative powers. The prerogative power to commute, mitigate or remit a sentence would not be affected by the Bill, but the prerogative power to quash a conviction would be curtailed from the time when an application for leave to appeal to the court against conviction was received by the registrar. An appellant would not be entitled to be present before the court except when he was given leave for the purpose. Appellants who had had legal aid from the service authorities would continue to have that aid; in other cases the court could give legal aid. Although generally no sentence of death would be executed until the accused had had an opportunity of appealing to the court and to the House of Lords, there was a provision which allowed the confirming authority to certify that it was essential in a particular case in the interests of discipline and for the purpose of securing the safety of the force with which the person sentenced was serving that the sentence should be carried out forthwith, and, in conclusion, Lord Jowitt emphasised that the existing system of review was not being altered—the appeal system was being superimposed upon it.

The MARQUESS OF READING said the Bill went a good deal further than either the Lewis or the Pilcher Committee. The fact that appeals would now be heard in public was an immeasurable step forward, but he feared that the popularity of appeals in their new form would result in heavy burdens for the court in war-time. LORD GODDARD said he would be President of the new court and responsible for its working. He doubted whether the Bill was really necessary. The Bill did not do what it would have been wise to do—remove from the Judge Advocate General's Department all responsibility for the preparation of prosecutions. The system as it already existed had secured justice for the voluntary serviceman and he could not see why it should not secure justice for the National Serviceman. The demand for this new court was due largely to the ineptitude of the War Office in the handling of publicity in recent cases. In a recent case he had tried himself to find out what the prosecution evidence had been and what the facts were. He could not find them. He was told that the evidence could not be published as the case was still *sub judice* because the review had not gone through. That was a preposterous reason. You could publish as much evidence as you liked while the case was going on. In England the Press would be in court and would report every word. The War Office had in recent cases failed to give the public any knowledge whatever of the facts relating to the charge.

The court which would in fact have to work this Bill was the Court of Criminal Appeal. The only difference was that instead of three judges of the King's Bench Division sitting, one judge of the English, Scots or Northern Irish Courts would be sufficient. Whole sections of the Court of Criminal Appeal Act had been lifted bodily and put into the Bill.

He was himself put in a very difficult position. He did not know what part it was thought the Scottish or Irish judges were to play. The Bill gave no indication. Was he to send for the Lord President and ask for a Scottish judge to be sent from Edinburgh whenever a Scottish soldier appealed? Lord Goddard drew attention to the Lord Chancellor's powers under the Bill to appoint to the court "such other persons . . . appearing to him to be specially qualified for appointment." Were those people to be lawyers or soldiers? He himself would rather have soldiers, but his main objection was that for the first time in our history civil courts and military courts were to be concerned with military law. Hitherto the High Court had only intervened to prevent civilians being tried by military courts. He did not think this new development was a desirable one. He thought that if there was to be an appeal it should be to a military court, as was envisaged by the Lewis Committee. If a civilian court were to be used he would have thought the Judicial Committee of the Privy Council was appropriate.

He had no doubt that the new court would build up case law and some enterprising law publishers would publish "Courts-Martial Appeals Cases." He did not envy the baffled brigadier who would have these cases cited to him at courts-martial. Another point was that the drafters of the Bill seemed to think that the deciding of an application to appeal was a small matter. When he was in London no week-end passed without his having to read a pile of papers in connection with applications for leave to appeal. If leave was given it was generally because the court could see that the conviction would have to be quashed—usually because there had been a misdirection by the judge. In all his experience in the Court of Criminal Appeal he had only twice

quashed a conviction because he was convinced that the man was innocent. He thought that if the present system of review in military cases was retained, except that the prisoner was told the reasons for the rejection of his petition, most of the present dissatisfaction would disappear. He regretted that this Bill, which provided much extra work for the judges, provided for no extra remuneration. If the Bill went through, however, the judges would do their best to work it.

The EARL OF SELKIRK said he noticed that the Bill gave the court power to appoint counsel apparently without first appointing a solicitor. This was unusual, but perhaps some special point made it necessary. He was dubious as to how a man appealing from some distant station could adequately instruct counsel unless he had a local solicitor or equivalent. Again, the court had power to commit for failure to attend to give evidence, etc.—but how could it enforce its orders against witnesses far away and of foreign nationality?

In reply to the debate, the LORD CHANCELLOR said the new court had been deliberately linked with the Court of Criminal Appeal because it was desired that the same sort of practice and the same sort of traditions should prevail in both. The provisions as to Scottish and Northern Ireland judges had been put in at their request and he would gladly advise the Lord Chief Justice as to the operation of this clause. He thought Lord Goddard had forgotten that since 1948 the Judge Advocate General's Department was not now in any way responsible for prosecutions. These were now the function of the various Army and Air Force Departments. He would bear in mind and look into the points made by the Earl of Selkirk. The Bill was read a second time. [29th May.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time :—

Baptist and Congregational Trusts Bill [H.L.] [29th May.
Sir William Turner's Hospital at Kirkleatham Bill [H.C.] [30th May.
Uttoxeter Urban District Council Bill [H.L.] [30th May.

In Committee :—

Coal Industry Bill [H.C.] . [30th May.

B. QUESTIONS

TOWN AND COUNTRY PLANNING: ADVERTISEMENTS

Mr. LINDGREN said there had been very few cases in which the Minister had decided appeals from refusal of advertisements on grounds of public safety when the local authority had refused permission on grounds of amenity and *vice versa*. Sir HERBERT WILLIAMS asked what opportunity was afforded the appellant of being heard, since he had not been heard at all on the issue on which his appeal was lost. Mr. LINDGREN said the appeals were settled on the facts in each case, and the full facts were obtained whatever the ground on which the local authority had based their decision. [29th May.

STATUTORY INSTRUMENTS

Aureomycin and Chloramphenicol Regulations, 1951. (S.I. 1951 No. 919.)

Candles (Maximum Prices) (No. 2) Order, 1951. (S.I. 1951 No. 924.)

Chancery Masters' Documents (Exhibits) Rules, 1951. (S.I. 1951 No. 905.)

These rules replace rules made in 1877 and provide that applications to inspect documents of Chancery suitors formerly in the custody of the Masters in Ordinary shall now be made to the Deputy Keeper of the Records.

Draft **Civil Defence** (Public Protection) (Scunthorpe) Regulations, 1951.

Draft Civil Defence Corps (Scunthorpe) Regulations, 1951.

Clitheroe Water Order, 1951. (S.I. 1951 No. 952.)

Contributions for Educational Services (Prescription of Areas) (Scotland) Regulations, 1951. (S.I. 1951 No. 899 (S. 54).)

County of East Sussex (Electoral Divisions) (No. 2) Order, 1951. (S.I. 1951 No. 914.)

Dried Egg (Control of Use) (Revocation) Order, 1951. (S.I. 1951 No. 928.)

East Suffolk and Norfolk River Board Area Order, 1951. (S.I. 1951 No. 920.)

Eggs (Great Britain and Northern Ireland) (Amendment No. 3) Order, 1951. (S.I. 1951 No. 953.)

Factories (Miscellaneous Welfare Order, etc., Amendment) Order, 1951. (S.I. 1951 No. 926.)

Financial Statements (District Audit) Amendment Regulations, 1951. (S.I. 1951 No. 922.)

Ground Sulphur (Prices) Order, 1951. (S.I. 1951 No. 934.)

Hamilton Water Order, 1951. (S.I. 1951 No. 945 (S. 55).)

Import Duties (Drawback) (No. 14) Order, 1951. (S.I. 1951 No. 895.)

Import Duties (Exemptions) (No. 7) Order, 1951. (S.I. 1951 No. 925.)

Kitchen Waste (Amendment) Order, 1951. (S.I. 1951 No. 904.)

Lincolnshire River Board (Ancholme Internal Drainage District) Order, 1951. (S.I. 1951 No. 936.)

Lincolnshire River Board (Ancholme Internal Drainage District) (Appointed Day) Order, 1951. (S.I. 1951 No. 937.)

Lincolnshire River Board (Reconstitution of the Winterton Beck Internal Drainage Board) Order, 1951. (S.I. 1951 No. 931.)

Lincolnshire River Board (Reconstitution of the Winterton Beck Internal Drainage Board) (Appointed Day) Order, 1951. (S.I. 1951 No. 932.)

National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment (No. 3) Regulations, 1951. (S.I. 1951 No. 918.)

Retention of Pipe under Highway (East Sussex) (No. 1) Order, 1951. (S.I. 1951 No. 911.)

School-leaving Record (Scotland) Rules, 1951. (S.I. 1951 No. 896 (S. 52).)

Stopping up of Highways (Derbyshire) (No. 5) Order, 1951. (S.I. 1951 No. 908.)

Stopping up of Highways (East Riding of Yorkshire) (No. 2) Order, 1951. (S.I. 1951 No. 907.)

Stopping up of Highways (London) (No. 12) Order, 1951. (S.I. 1951 No. 906.)

Stopping up of Highways (Soke of Peterborough) (No. 1) Order, 1951. (S.I. 1951 No. 909.)

Stopping up of Highways (West Suffolk) (No. 1) Order, 1951. (S.I. 1951 No. 910.)

Stopping up of Highways (West Suffolk) (No. 2) Order, 1951. (S.I. 1951 No. 942.)

Tat Fechan Water Supply Order, 1951. (S.I. 1951 No. 935.)

Utility Apparel (Infants' and Girls' Wear) (Manufacture and Supply) Order, 1951. (S.I. 1951 No. 900.)

Utility Apparel (Women's Domestic Overalls and Aprons) (Manufacture and Supply) (Amendment) Order, 1951. (S.I. 1951 No. 894.)

Utility Mattresses, Pillows and Bolsters (Manufacture and Supply) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 933.)

Wild Birds Protection (Devon) Order, 1951. (S.I. 1951 No. 901.)

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90 Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Privilege—SOLICITOR'S DEFAMATORY LETTER

Q. A, a solicitor, writes a letter to B upon the instructions of A's client C, which letter contains matter defamatory of B and which is published to B's employees. A acted honestly and without malice, but it appears that C's instructions were totally incorrect and that C was in fact actuated by malice. We apprehend that in such a case as this, the privilege is that of A as well as of C and accordingly A's privilege is not destroyed by C's malice, but we shall be obliged if you will kindly confirm.

A. No action lies against a solicitor for *relevant* defamatory matter contained in a letter written by him in the ordinary course of his duty to his client—unless express malice in him is proved.

He is not protected if he knew that his client's statements were false. In the circumstances mentioned it would appear that the solicitor is protected.

Maintenance—Recovery of Arrears from Deceased Husband's Estate

Q. Our client was separated from her husband for some years before his death, and the husband was liable to pay maintenance for his son, but not for the wife herself. The husband died and left all his property, by his will, to a woman who was living with him at his death. The estate is quite small. There were arrears of maintenance amounting to some £25 as at the date of the husband's death. There appears to be some doubt as to whether or not the executrix can be sued for this amount. If this cannot be done, would you agree that it would be advisable to proceed under the Inheritance (Family Provision) Act, 1938?

A. It is presumed that the widow had obtained an order under the Guardianship of Infants Acts, 1886 and 1925. Such orders were formerly enforceable, if obtained in magistrates' courts, under the civil debt procedure (Guardianship of Infants Act, 1925, s. 7 (4)), but that subsection was repealed by the Children Act, 1948. By s. 53 of the latter Act magistrates' orders under the Guardianship of Infants Acts, whenever made, are enforced in like manner as affiliation orders. It was held in *Re Harrington* [1908] 2 Ch. 687; 52 Sol. J. 855, that arrears under an affiliation order could not be recovered from the deceased father's estate, and in *Re Bidie* [1948] Ch. 697; 1 All E.R. 885; 92 Sol. J. 310 (affirmed [1949] Ch. 121; [1948] 2 All E.R. 995; 92 Sol. J. 705, on this point) that arrears under a separation order made under the Summary Jurisdiction (Married Women) Act, 1895, were likewise not recoverable by the widow from the deceased husband's estate. It was also held in the same case that she could not claim against the estate for sums which she ought to have received during the husband's life in respect of his common-law liability to maintain her or in respect of any equitable right of her so to be maintained. It had already been decided in *Re Woolgar* [1942] 1 All E.R. 583; 86 Sol. J. 161 (approved in *Re Bidie, supra*), that arrears under an order of the Divorce Court were not recoverable after the husband's death. It is difficult to distinguish such a case from one under the Guardianship of Infants Acts, and it seems therefore that the arrears due to your client are not recoverable. Provided that the husband was domiciled in England, there seem to be *prima facie* grounds for proceeding under the Inheritance (Family Provision) Act, 1938.

Agricultural Holding—Costs of Written Tenancy Agreement

Q. The tenant occupied an agricultural holding under a verbal agreement. The landlord purchased the holding, subject to the tenancy, about three years ago and the parties subsequently arbitrated as to the rent. The landlord was awarded an increase in rent. The landlord then called upon the tenant to sign an agreement embodying the terms of the tenancy, which the tenant has agreed to do. The question has now arisen: by whom are the costs of and stamp duty on the agreement to be paid? The landlord argues that the tenant must pay. The tenant argues that he need only pay his own solicitor, and that the landlord must pay his own solicitor.

A. The costs of a written tenancy agreement entered into by consent of the parties and without an arbitration under s. 5 of the Agricultural Holdings Act, 1948, do not appear to be specifically dealt with either by the Act or by other authority. In the absence of any special agreement between the landlord and the tenant on the question of costs, we consider that the ordinary custom of the profession applies, namely, that if the term is for three years or more and the instrument is under seal, the tenant pays the landlord's costs, whereas if the document is under hand only and for less than three years or from year to year, each party bears his own costs, the stamp duty being paid by the tenant. The custom of the profession is not borne out, however, by such cases as *Re Negus* [1895] 1 Ch. 73 and *Re Gray* [1901] 1 Ch. 239, where the tenant was held liable for the landlord's scale costs of a tenancy agreement for three years under hand only.

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has appointed Mr. E. M. Foster to be the Registrar of Willesden County Court on his transfer from the Registrarship of the Cambridge group of courts as from 1st June, 1951. The appointment is in consequence of the death of Mr. Vaughan-Roderick.

The Lord Chancellor has appointed Mr. K. W. Welfare to be the Registrar of Cambridge, Bishops Stortford, Ely, Newmarket and Saffron Walden County Courts and District Registrar in the District Registry of the High Court of Justice in Cambridge as from 1st June, 1951, on the transfer of Mr. E. M. Foster.

The Lord Chancellor has appointed Mr. E. G. M. Fletcher, M.P., to be a member of the Statute Law Committee.

Mr. D. H. Lines, senior assistant solicitor to the Bedfordshire County Council, has been appointed deputy Clerk to the County Council.

Mr. W. A. Middleham has been appointed assistant solicitor in the Town Clerk's office at Lancaster.

Mr. A. E. H. Sevier and Mr. H. S. Rees have been appointed to the Derby Diocesan Board of Finance.

Personal Notes

Mr. J. A. Brain, solicitor, of Reading, has been re-elected Chairman of the Berkshire Boy Scouts' Association.

Alderman A. F. Clark, solicitor, who has just completed a successful year of office as Mayor of Reading, has been presented with a book by the Reading and District Free Church Federal Council in appreciation of his services to the local Free Churches during his mayoralty.

Mr. B. J. Nichols, solicitor, of Preston, was married on 12th May to Miss Joan Dobson, of Preston.

Mr. J. S. Parker, Coroner for East Northamptonshire, has been elected President of Wellingborough Rotary Club.

Miscellaneous

THE LAW SOCIETY

The annual general meeting of the members of The Law Society will be held in the Hall of the Society on Friday, 6th July, 1951, at 2 p.m. The following are the names of the members of the Council retiring by rotation: Mr. Barrow, Mr. Davies, Sir Leslie Farrer, Sir Hugh Foster, Mr. Maddox, Mr. Marshall, Major Milner, Mr. Miskin, Mr. Penruddock and Mr. Webster. So far as is known they will (with the exception of Mr. Penruddock) be nominated for re-election. There is one other vacancy, caused by the death of the late Sir Nevil Smart.

OBITUARY

Mr. E. A. ASHBY

Mr. Ernest Arthur Ashby, retired solicitor, formerly of the Public Trustee Office at Manchester, has died at his home at Rhosneigr, Anglesea.

Mr. J. I. DAWSON

Mr. John Ingram Dawson, retired solicitor, of Barnard Castle, died on 16th May, aged 89. He was admitted in 1886.

Mr. P. W. F. LABRUM

Mr. Philip William Farrington Labrum, solicitor, of Leamington, died on 30th May, aged 40. He was admitted in 1934.

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